2905.

SUPREME COURT OF THE UNITED STATES.

No. 90.

JOSHUA R. STANFORD, PLAINTIFF IN ERROR,

vs.

CLAY TAYLOR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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GIDEON, print.

District of Missouri, *sct.*

Joshua R. Stanford, plaintiff,
vs.
Clay Taylor, defendant.

Be it remembered, that heretofore, to wit, on the twenty-first day of August, eighteen hundred and fifty-four, came the plaintiff aforesaid by his attorney, and filed in the office of the clerk of the United States circuit court for Missouri district his declaration against the defendant aforesaid, which declaration is as follows, viz.:

Declaration.

Circuit court of the United States,
Eighth circuit, district of Missouri, sct.

To October term, 1854.

Joshua R. Stanford, who is a citizen of the State of Illinois, complains of Clay Taylor, who is a citizen of the State of Missouri, of a plea of trespass and ejectment. For that, whereas, the said Stanford was on the first day of June, in the year of our Lord one thousand eight hundred and fifty-one, entitled, and from that time henceforth has been and now is entitled, to the possession of certain premises known and described as follows, to wit: A tract of land situate in the county of St. Louis and said State of Missouri, about three miles from said city of St. Louis, containing sixteen hundred arpens, and being the same land conceded by Don Francisco Cruzat, Spanish lieutenant governor of the western part of Illinois, on the twelfth day of May, in the year of our Lord one thousand seven hundred and eighty-five, to Angelico Chauvin, (widow of Michel Beaulieu,) and confirmed by the board of commissioners of the United States for ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, on the twentieth day of August, in the year of our Lord one thousand eight hundred and eleven, to John F. Perry, assignee of said Angelico Chauvin, and for which said commissioners issued their certificate number twelve hundred and one (1201), which said tract of land is of the value of ten thousand dollars. And the said plaintiff being so entitled to the possession of the said premises, the said Clay Taylor afterwards, and on the day first aforesaid named, entered into the possession of the said premises, and from that time has unlawfully withheld, and still does unlawfully withhold from the said plaintiff, the possession of the said premises, to plaintiff's damage of one thousand dollars, and hence this suit.

J. R. SHEPLEY,
B. A. HILL,
W. R. BIDDLECOME,
Attorneys for plaintiff.

Upon the foregoing declaration the following summons issued, viz:

Summons.

MISSOURI DISTRICT, ***sct.***

The President of the United States, to the marshal of the Missouri district, greeting:

You are hereby commanded to summon Clay Taylor, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the first Monday of October next, then and there to answer unto Joshua R. Stanford, a citizen of the State of Illinois, in a plea of trespass and ejectment, to the damage of said plaintiff one thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the twenty-first day of August, A. D. eighteen hundred and fifty-four.

[L. S.]

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

BEN. F. HICKMAN, ***Clerk.***

Upon the foregoing summons the marshal made the following return, viz.:

Marshal's return.

I certify, that I executed this writ, with a copy of the declaration attached, by offering to read the same to the said Clay Taylor, which he refused to hear, and allowing the said Clay Taylor to read the same, when he acknowledged service thereof, in the city of St. Louis, Mo., on this 22d August, 1854.

T. S. BRYANT,
U. S. marshal Mo. dist.
By R. K. MOORE, ***Dep.***

Afterwards, at the October term, 1854, of our United States circuit court, on Wednesday, October 4th, 1854, the following proceedings were had herein, viz.:

Plea filed.

JOSHUA R. STANFORD, plaintiff,
agst. } **In ejectment.**
CLAY TAYLOR, defendant.

This day comes the defendant, by his attorney, and files his plea of not guilty in this case, which said plea is as follows, viz.:

Plea.

In the circuit court of the United States for the district of Missouri, October term, 1854.

JOSHUA R. STANFORD }
vs. }
CLAY TAYLOR. }

Defendant, by his attorney, comes and for plea says, that he is not guilty of the trespass and ejectment as charged in the plaintiff's declaration; and of this he puts himself upon the country, &c.

WILLIS L. WILLIAMS, *Atto. p. d.*

Afterwards, at the term last aforesaid of our said court, on Thursday, October 5th, 1854, the following further proceedings were had herein, viz.:

Motion for order of survey filed.

JOSHUA R. STANFORD, plaintiff, }
agst. } In ejectment.
CLAY TAYLOR, defendant. }

This day comes the plaintiff, by his attorney, and files his motion asking for an order of survey to be ordered by the court in this case, which said motion is as follows, viz.:

Motion for order of survey.

JOSHUA R. STANFORD }
vs. }
CLAY TAYLOR. }

In the circuit court of the United States, October term, 1854.

Now appears the plaintiff in the above entitled case, and moves the court to grant an order of survey in the said case, the same to conform as near as may be to the order heretofore granted at the last term of this court, in the case of the same plaintiff vs. Matilda N. Taylor.

HILL, SHEPLEY & BIDDLECOME,
Attorneys for plaintiff.

Afterwards, at the term last aforesaid of our said court, on Saturday, October 7th, 1854, the following further proceedings were had therein, viz.:

Order of survey.

JOSHUA R. STANFORD, plaintiff, }
against } Ejectment.
CLAY TAYLOR, defendant. }

This day comes the plaintiff, by his attorney, and on his motion, it is ordered that a survey be made of the land in dispute in this case, and that the surveyor of St. Louis county be appointed to make said survey; and that he, at such time as he may appoint, proceed to survey and lay off the same as he thinks it ought to be surveyed, and that he also survey the same as either party may require, having due regard for all deeds and other evidences of title that may be produced to him, and reporting all matters of fact, specially; and that he give notice to the parties or their attorneys of the time of making said survey, and that he make out and return to the clerk's office of this court three fair plats and reports of such survey, on or before the first day of the next term of this court.

Afterwards, at the April term, 1855, of our said court, on Friday, April 13th, 1855, the following further proceedings were had herein, viz.:

Jury, trial, and judgment.

JOSHUA R. STANFORD, plaintiff,
against } Ejectment.
CLAY TAYLOR, defendant.

This day come the parties, by their attorneys, and this case being called for trial, and both parties being ready; it is ordered, that a jury come, and thereupon comes said jury, viz.:

George W. Forrest, Samuel Sone, Henry B. Brant, William A. Powell, Michel Stephenson, Joseph N. Wood, John M. Pearson, William H. J'Anson, Jordon Hays, David Bayles, R. P. McCluney, and Alfred Bayse, who, after being sworn well and truly to try the issue joined, returned into court the following verdict:

"We, the jury, find the defendant not guilty of the trespass and ejectment complained of and charged against him by the plaintiff."

It is therefore considered by the court, that the plaintiff take nothing by his writ in this case, and that the defendant, Clay Taylor, go hence without day, and recover against the plaintiff, Joshua R. Stanford, his costs by him about his suit in this behalf expended, and that execution issue therefor.

Afterwards, at the term last aforesaid of our said court, on Monday, April 23d, 1855, the following further proceedings were had herein, viz.:

Bill of exceptions filed.

JOSHUA R. STANFORD, plaintiff,
against } Ejectment.
CLAY TAYLOR, defendant.

This day comes the plaintiff, by his attorney, and files his bill of exceptions in this case, which was signed, sealed, and ordered to be made part of the record in this case; which said bill of exceptions is as follows, viz.:

Bill of exceptions.

Joshua R. Stanford
vs.
Clay Taylor.

In circuit court of the United States for district of Missouri.—April term, 1855.

Be it remembered, that on the 13th day of April, in said term, the cause above was called for trial, and a jury being empannelled to try the issues therein made upon the declaration and plea, the following proceedings were had:

Concession to A. Chauvin.

Plaintiff produced in evidence a concession from Don Francisco Cruzat, of date May 12, 1785, to Angelique Chauvin, which is in the following words and figures, to wit:

***Concession.*—Don Fran'co Cruzat, ten'e coronel graduado de infant'a comand'te en gefe y terr'te de gov'or de esta partidor occidental y distritos de los Ilinueses: Angela Chovin, visto lo expuesto en el presente memorial, presentado por Angela Chovin, vuida del depento Miguel Bolica de este pueblo de Sn. Luis con fecha del seis de mayo de este corriente año le he concedido a titulo de propriedad para ella y sus herederos y otros que representen sa derecho, quarenta arpanes de tierra de frente, sobre quarenta de profundor á lo largo de la rivera Llamada de los Padres del Norte al Sur, que confiad por un lado a las tierras de Luis Robert y por el otro al dominio del rey; con condicion de hacer la valer y cultivarla dentro de un año a contar desde el dia de la fecha y de lo contrario seran incorporados dichos quarenta arpanes al dominio real deviendo esta sujeta a los cargos publicos y otros que S. M. quiera imponerle.**

Dado en Sn. Luis de Ilinois, a los doze dias del mes de Mayo, de el año de mil setecientos ochenta y cinco.

(Signed) FRAN'CO CRUZAT.

Recorder's Office, *St. Louis, 5th April,* 1851.

The foregoing concession is correctly transcribed from folio 12 of Livre terrien, No. 4, in this office.

ADOLPHE RENARD,
U. S. recorder of land titles in the State of Missouri.

Also confirmation of August 20, 1811, by the board of commissioners, under said concession, to Jean F. Perry, assignee of said Angelique Chauvin, together with proceedings of said board of date August 23, 1806, in regard to same; and the said commissioners' certificate, No. 1201, of date August 20, 1811, to said Perry; which said proceedings, certificate, and confirmation are in the following words and figures, to wit:

Proceedings, certificate and confirmation of board of com'rs to J. F. Perry.

August 23, 1806.

The board met agreeably to adjournment.

Present, the Honorable Clement B. Penrose and James L. Donaldson, esqrs.

John F. Perry, assignee of Angelica Chauvin, widow Beaulieu, claiming 40 by 40 arpens of land, situate on the river Des Peres, district of Saint Louis, produces a duly registered concession from Francis Cruzat, dated the 12th May, 1785.

Pierre Bequet being duly sworn says, that the said tract of land was settled about eighteen years ago by the said widow Beaulieu; that he assisted her in moving corn which had been raised on the same.

Charles Gratiot being also duly sworn says, that the aforesaid widow Beaulieu settled the said tract of land in the year 1785, and raised a crop of corn in that year.

Nicholas Beaugeroux being also duly sworn says, that claimant settled the said tract of land in the year of the flood, commonly known amongst the inhabitants by the highest flood; that she had then a cabin on the same, where he, the witness, saw her children and *sheves*.

Vincent Bouis being also duly sworn says, that the said tract of land was actually settled and cultivated about the 86 ; that the Indians being then very troublesome, and killing the whites whenever they met them, she, the said widow, was obliged to abandon the same.

The board rejects this claim, and observe that it appears from the records in their possession, that the aforesaid concession had been revoked, and a new one for said land granted to one Charles Tayon. See minutes of board, book No. 1, ps. 486, 487, and 488.

Tuesday, August 20, 1811.

Board met: present, Clement B. Penrose and Frederick Bates, commissioners. Cert. 1201. Jean F. Perry, assignee of Angelica Chovin, claiming 1600 arpens of land. See book No. 1, page 487.

The board confirm to Jean F. Perry one thousand six hundred arpens of land, and order that the same be surveyed conformable to his possession: survey at expense of claimant.

Board adjourned till to-morrow, eight o'clock a. m.

CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes of the board, book No. 5, ps. 322 and 324.

LOUISIANA.

Commissioners' certificate, No. 1201.

August 20th, 1811.

We, the undersigned commissioners for ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, have decided that John F. Perry, claiming under Angelica Chauvin, original claimant, is entitled to a patent under the provisions of an act of the Congress of the United States, entitled "An act respecting claims to lands in the Territories of Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for sixteen hundred arpens of land situate in the district of St. Louis, on river Des Peres, and order that the same be surveyed conformably to the possession, by virtue of a concession or order of survey from Francis Cruzat, lieutenant general.

CLEMENT B. PENROSE,
FREDERICK BATES.

See original certificate on file.

RECORDER'S OFFICE,
St. Louis, 1 *April*, 1851.

I certify that the foregoing is correctly transcribed from the books and files of this office.

ADOLPH RENARD,
U. S. Recorder of land titles in the State of Missouri.

Plaintiff also produced evidence, to show that plaintiff had a regular and legal title derived from said Jean F. Perry to the plaintiff, all of which was admitted on part of defendant. Defendant's possession of the land sued for was admitted. Plaintiff then offered to prove and show that the possession of Jean F. Perry, the confirmee of the tract of land confirmed to him, was a part of a tract of land east of the tract of 7 by 40 arpens of Louis Robert, and adjoining it; and that being located as claimed by plaintiff it should be, would include the premises in controversy; that his possession was to the same extent and of the same land actually possessed and cultivated by Angelique Chauvin, the original concedee, who had a house on the same, and was of a part of a square of land of 40 by 40 arpens in the township of St. Louis, bounded on the west by the said tract of Louis Robert, which Robert tract is numbered on the plat of St. Louis township as United States survey No. 2036, and that the adjoining grants so bound and locate the Chauvin claim, that, if properly surveyed, it would cover the premises in question. It is admitted by plaintiff, that there is no United States survey of the Chauvin concession and confirmation, including or covering the premises sued for, and that U. S. survey No. 1201, introduced by defendant, does not include the land sued for. Upon said admission and said offer of proof, the defendant objected to the introduction or hearing of the proofs as offered, and upon due consideration the objection was sustained by the court, and the plaintiff was refused the admission of proof of said facts; and thereupon, plaintiff excepts to the ruling of the court therein. It is admitted by defendant, and agreed, that the value of the premises in controversy is over the sum of two thousand dollars. Plaintiff having closed, defendant offered in evidence the United States approved survey of the Angelique Chauvin grant, confirmed to Jean F. Perry, being survey No. 1201. Plaintiff objected to said survey for reasons appearing in the proofs hereinafter offered; court overruled the objection, and plaintiff then and there excepted. The said survey was then read and submitted, and is in the figures and words following:

Survey No. 1201.

Survey No. 1201.—Plat and description of a survey of $1,361\frac{11}{100}$ acres of land, equal to 1,600 arpens, confirmed to Jean F. Perry, assignee of Angelica Chovin, executed by me on the 8th, 9th, and 10th, and 21st of March, 1832, under instructions of the same month.

[*For plat, see original, page* 7.]

Compass adjusted to an assumed variation of 7° 5′ east, in order to conform to the south boundary line of survey No. 378 in the name of Marie Louise Chouteau Papin, which line is adopted as a line of this survey.

Beginning at a post, the southeasterly corner of the aforesaid survey, No. 378, in the name of Marie Louise Chouteau Papin, for $2,722\frac{24}{100}$ acres, equal to 3,200 arpens, from which post a stone set of old, bears north 44 links, and a white oak, 36 inches diameter, bears N. 23° W. 45 links distant; thence N. 7° 18′ E. with the east boundary line of the aforesaid survey of Papin; 2 chains 90 links, a white oak 40 inches diameter; 18 chains 85 links, river Des Peres 40 links wide runs S. E.; 20 chains 90 links, a branch 20 links wide runs N. E.; 23 chains, a walnut 10 inches diameter; 25 chains 90 links, a road bears east and west; 30 chains 73 links, a fence belonging to Cabanné bears east and west, it is about 8 links to the S. W. corner of the field; here the line leaves the timber; 43 chains 15 links, a black oak 6 inches in diameter; 46 chains, a branch 20 links wide runs S. W. 51 chains; the line leaves the field to the right, the fence continuing on to the right of the line; 59 chains 86 links, a stone 6 links to the left; 64 chains and 32 links, a stone 25 links to the west; 74 chains 69 links, a stone 4 links to the west; 89 chains and 32 links, a stone 26 links to the west; 96 chains 90 links, a stone 22 links to the east; 99 chains and 56 links, a stone; 104 chains 72 links, a stone 12 links to the east; 110 chains 12 links, a stone 6 links to the east; 112 chains 8 links a stone; 116 chains 66 links to a post northeasterly corner of this survey of Perry under Chovin, from which a pin oak 3 inches diameter bears N. 23 W. 91 links; and a pin oak 8 inches diameter bears S. 22° E. 290 links; both were marked P. S. This corner is 108 links S. 7° 18′ W. of the N. E. corner of Papin's survey No. 378; thence from said northeasterly corner of Jean F. Perry's survey, N. 83° W. on a new line 11 chains 50 links to a road bears N. E. and S. W.; 15 chains to small timber bears N. W. and S. W.; 17 chains to prairie bears N. E. and S. E.; 22 chains

90 links, a fence and an improvement, which bears S. and N.; 23 chains 40 links, the southeast corner of a house belonging to Cabanné is 2 links to the right; 23 chains 68 links, the southwest corner of the said house is 1½ links to the right; 28 chains 90 links, out of the improvement, which bears N. 5° E. and N. 5° W.; 32 chains to small timber bears N. W. and S. W.; 34 chains and 50 links to prairie bears N. E. and S. E.; 46 chains, small timber bears N. E. and S. W.; 47 chains 60 links to a branch 6 links wide, runs south, at the crossing enter prairie; 60 chains, an improvement to the left about 5 chains; 90 chains to wet bottom prairie bears N. and S.; 93 chains 50 links to undergrowth; 96 chains 40 links, a branch 12 links wide, runs south; 99 chains 37 links, a sassafras 2 inches diameter, in the east edge of large timber; 106 chains 80 links a pin oak 12 inches diameter; 110 chains 70 links, a branch 15 links wide, runs S. E., at the crossing higher land commences; 116 chains 66 links to a post, the northwesterly corner of this survey of Jean F. Perry, assignee of Angelica Chovin, from which a hickory 8 inches diameter bears S. 27° E. 18 links, and a pin oak 12 inches diameter bears N. 12° E. 25 links; thence S. 7° 6′ W., 6 chains 31 links, a road bears N. E. and S. W.; 8 chains 67 links, a road bears E. and W.; 13 chains 64 links, a burr oak 20 inches diameter; 26 chains 21 links, river Des Peres, 60 links wide, runs N. E.; 28 chains 61 links to scattered timber, and leave the bottom with higher timber; 38 chains 16 links, a road bears N. E. and S. W.; 75 chains 31 links, a black oak 6 inches diameter; 76 chains 31 links, a road bears N. W. and nearly south, crossing the line; 84 chains 69 links, a branch 12 links wide runs S. E.; 89 chains 81 links, the road bears southeasterly and leaves the line; 102 chains 45 links, a branch 6 links wide, runs N. E.; 103 chains 25 links, the same branch runs S. W.; 104 chains 15 links, the same branch, 6 links wide, runs N. E.; 107 chains 7 links, a branch 4 links wide runs N. E.; 116 chains 81 links to a post southwesterly corner of the survey of Jean F. Perry, under Angelica Chovin, on the south boundary line of the survey of Papin's; from which post a post-oak 14 inches diameter bears S. 55° E. 161 links; and a post-oak 16 inches diameter bears N. 89° E. 271 links; both trees marked "P. S." Thence S. 83° E. with the south boundary of Papin's tract; 8 chains 16 links, a road bears N. W. and S. E.; 13 chains 60 links, a branch 6 links wide runs N. E.; 25 chains 36 links, a branch 10 links wide runs north; 49 chains 29 links the river Des Peres 70 links wide runs south; 55 chains 16 links, the left bank of river Des Peres comes from the S. W.; 57 chains 66 links, the left bank of *of* the river Des Peres runs to the S. E., having crossed a northern bend thereof; 82 chains 66 links, the river Des Peres runs north; 85 chains 30 links, river Des Peres 80 links wide runs south; 94 chains 36 links, river Des Peres 80 links wide runs north; 114 chains 32 links, a branch 12 links wide runs north; 118 chains 16 links to the beginning, corner of the survey.

St. Louis, 6th September, 1834.

(Signed) L. M. EILER, *Deputy surveyor*.

[Rec. xc, D. T., 1855.]—2

Office of the Surveyor General
for Illinois and Missouri,
St. Louis, April 10th, 1855.

I hereby certify, that the foregoing plat and description of survey No. 1201, of Jean F. Perry, under Angelica Chovin, is correctly copied from pages 89 and 90 of Book "C," Records of private surveys in Missouri, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor general.

Plaintiff then offered to show that the survey offered in evidence on defendant's part, and admitted, was not made in conformity with the written instructions of the surveyor general to the deputy surveyor; that the confirmation to Perry was surveyed west of the Robert tract and not adjoining it, when it should have been surveyed east of the same and adjoining it; that it was surveyed within the boundaries of the tract of one Papin, already surveyed by the United States; that the general instructions of the surveyor general's office prohibited such a location, and prohibited the survey of the confirmation in such a manner as to conflict with other surveyed confirmations; and that, if full information had been obtained from the office by the deputy surveyor as directed in the instructions, the said tract would have been necessarily located as claimed by plaintiff. To all of which proofs the defendant objected, and the court sustained the objection; and thereupon, the plaintiff excepted to the ruling of the court, and to the exclusion of the offered proof. Plaintiff then offered in evidence (to the same point as above) the survey and report of N. F. Hyer, theretofore appointed in this cause to make survey of the disputed lands in accordance with the order of court, and which survey and report were on file in this cause; and defendant objected to said survey and report being given in evidence, and the said objection being sustained, the plaintiff excepted to the court's ruling and to the exclusion of said survey and report. Said survey and report are in the following words and figures.

(It is agreed by the parties, that the above survey need not be copied in this transcript, but that one of the copies of the same on file herein be sent up with this transcript.)

Report of Surveyor N. F. Hyer.

County Surveyor's Office,
St. Louis, March 31, 1855.

Joshua R. Stanford
vs.
Clay Taylor.

United States circuit court for Missouri district.

By virtue of an order of the court in this case to me directed and delivered, requiring survey to made of the land in dispute herein, after giving due notice to the parties, I proceeded to the work thus assigned, and the result of my survey is shown on the map herewith returned. The land claimed by the plaintiff is indicated on said plat by the letters A, B, C, and D, and is described by the plaintiff as a tract of land, situated in the county of St. Louis, and State of Missouri, about three miles from the city of St. Louis, containing 1,600 arpens, and being the same land conceded by Don Francisco Cruzat, Spanish lieutenant governor of the western part of Illinois, on the 12th day of May, 1785, to Angelica Chauvin, (widow of Michael Beaulieu,) and confirmed by the board of commissioners of the United States for ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, on the 20th day of August, 1811, to John F. Perry, assignee of Angelica Chauvin, and for which said commissioners issued their certificate No. 1201. As the great question at issue in this case is the true location of the Chauvin claim, it would seem to be expected that I should give the reasons which have induced me to locate same as I have done. 1st. It is the "land in dispute in this case." From the papers referred to me it appears, that a group of concessions were made on or near the river Des Peres, by Lieutenant Governors de Leybec and Cruzat, between the 6th April, 1779, and the 6th June, 1786, and that, during the incumbency of these officers, those lands were not actually surveyed. The grants, in order of their dates, are as follows:

1st. April 6, 1779, to Louis Robert, was granted seven arpens of land in width, by 40 arpens in length, adjoining by a straight line to the river Des Peres, and by taking its width on the north side to the king's domain, one end to the lands of the Grand prairie, and on the other end to the king's domain.

2d. 8th June, 1779, Alexie Loise, 3 arpens of land by the customary depth of 40 arpens in the prairie of the river; bounded on the south side by Robert, and on the other, i. e., the north, by the king's domain, the two ends running east and west.

3d. 25th March, 1780, Francis Hebert, two arpens of land in width by forty arpens in length, situated in the prairie of the river Des Peres, in continuation of the land of Mr. Robert, adjoining on one side, the west, to that of said Robert, on the east side to that of Charles Roy, on the north end to the king's domain, and on the south end, which is the front of said land, to the river Des Peres.

4th. 25th March, 1780, Charles Roy, two arpens in width by forty arpens in length, situated in the new settlement of river Des Peres, in continuation of the other inhabitants of the said place, adjoining on one side to the land of Francis Hebert, and on the other to the king's domain.

5th. 14th February, 1785, Charles Gratiot's grant on the river Des Peres, 84 arpens in width from east to west, the line of which crosses the river Des Peres, by 84 arpens in depth from south to north, ascending said river, beginning at the lands of the Barriere des Noyers.

6th. 12th May, 1785, Angelica Chauvin, concession on the river Des Peres, 40 arpens of land in front by 40 in depth, along the river called Des Peres, from north to south, bounded on the one side by the lands of Louis Robert, on the other by the king's domain.

7th. 6th June, 1786, Charles Tayon is granted the same land as had been conceded to Angelica Chauvin.

8th. September 1st, 1796, Augustus Chouteau petitions the commandant to grant to his sister, Mrs. Papin, a tract of land of 40 arpens front by 80 arpens deep, situated at about six miles southwest from this town, which land shall be bounded on the north and west by vacant lands of his majesty's domain, on the south in part by the lands of Mr. Charles Gratiot, and in part by the domain, and on the east by the said Charles Gratiot, in order that Mrs. Papin, here represented by the said A. Chouteau, her brother, may form the establishment of a stock farm with the animals he has given her. The land is granted as asked for, and the commandant directs that Mr. Soulard shall put the interested party and her family in possession of the land which is called for, in the same form and at the same place designated; that the animals contemplated for the stock farm are already placed on it; "that I am satisfied the land asked for is vacant, and for the most part fit only for the intended purpose." This being the order in which the grants are made, I will now examine the surveys in the order in which they were made.

Charles Gratiot, 84 by 84 arpens. This grant was surveyed on the 17th May, 1796, by Antoine Soulard, and is situated at the end of the lots of 40 arpens of the Barriere des Noyers, and is distant about 1½ leagues from this town, in a southwest ¼ west course from the fort of St. Louis of the said town, bounded on its front by the lands of divers inhabitants, and on all other sides by vacant lands. Charles Gratiot became the owner, by purchase, of the two tracts of Robert and Loise, viz., Robert on the 8th February, 1797, from Baptiste Laurens, who had acquired it of Louis Robert. It is described as being a tract of land situated on the river Des Peres, of 7 arpens in width by forty arpens in depth, fronting on the south the lands of the said Mr. Charles Gratiot, adjoining east to the land of Mr. Charles Tayon, west to that of Fifi Beaugeneau, and north to the king's domain; and that of Loise on the 7th February, 1797.

On the 16th February, 1797, Charles Gratiot petitions Governor Trudeau for the survey of his two purchases, which he united in a single tract of 10 by 40 arpens, fronting on the south the lands of the petitioner, bounded east by the land of Charles Tayon, west by that of J. Marie Papin, and north by the king's domain; which survey was executed by Soulard on the 18th February, 1797.

Marie Louise Papin's survey was executed 20th February, 1797. In the petition of Mrs. Chauvin are these words: "Give to her a concession on the river Des Peres, containing 40 arpens in front on the said river, north and south, by the customary depth of 40 arpens on each side of said river, which concession adjoins on the north side (of said river) to that of Louis Robert, in ascending to the king's domain." The words in the grant are these: "Concedes to her, and others that might represent her rights, 40 arpens of land in front by 40 in depth along the river Des Peres, from north to south, bounded on one side by the land of Louis Robert, on the other by the king's domain." Thus it appears, that instead of granting the land as asked for in the petition, 40 arpens on each side of the river, the grant is only for 40 arpens on one side; and instead of being bounded north by Robert, the grant has it on one side by Robert.

By reference to Soulard's survey of Gratiot's 400 arpens tract, he calls for bounding on the east by vacant land, and, so far as his surveys were then made, it was vacant, and on the west by Mrs. Papin. But it will be perceived, by reference to the foregoing extracts, that Mr. Soulard had been directed by the governor, the year before, to put Mrs. Papin in possession of the land she had (or rather her brother for her had) asked for. Thus he was fully informed of her location. Thus far the evidence, as I understand it, goes to show that Mrs. Chauvin's grant should be located on the east side of Robert, now Gratiot; but the survey was to include the possession. Have I included the possession in my survey? I think I have. The cultivation of the land of Mrs. Chauvin was proved by the following witnesses: Charles Gratiot and Fifi Beaugeneau in 1785, Vincent Boice in 1786, and Pierre Bequet in 1788. Mr. Gratiot owned the land on the west, and partly on the south, and would be most likely to know where the improvements were. Then we have the location of the Beaulieu spring and Beaulieu's pond, located as I have described the same on the map; then the testimony of Smith and Labbie, that the land was cultivated between the spring and pond.

From the foregoing thus briefly referred to, I am of the opinion that the following described land is that claimed by the plaintiff in this suit, viz.: Beginning at the southest corner of survey No. 2036, in the name of Charles Gratiot, a point on the river Des Peres, from which a forked white oak 18 inches in diameter bears N. 32½ E. 57 links distant, and running thence N. 7 E., along the east line of said survey, (being Gratiot's 400 arpens tract,) 116 chains and 66 links to a stake in said line, from which the stone at the N. E. corner of said survey bears N. 7 E., and is 2 chains 60 links distant; thence S. 83 E. 116 chains and 66 links to a stake, the N. E. corner of this survey; thence S. 7 W. 116 chains and 66 links to a stone, the S. E. corner of this survey; thence N. 83 W. at 91.37, the N. E. corner of the Gratiot league square, 116 chains and 66 links to the place of beginning, containing 1,600 arpens, equal to acres. The connection with other surveys is represented on the map herewith returned.

N. F. HYER, *County surveyor.*

The plaintiff asked the following instructions, which were refused. (There are no instructions on file amongst the papers of the case purporting to have been offered by the plaintiff.—*Clerk.*)

Defendant asked the following instruction:

Defendant's instruction given.

The parties litigant agreeing that the official survey of the confirmation, under which the plaintiff claims the land in dispute, does not include the premises sued for, the jury ought to find for the defendant; which was given. Plaintiff excepted to said giving and refusing of instructions at the time.

The cause having been submitted upon the foregoing proofs, and offers of proof, and the instructions, the jury returned the following verdict:

Verdict of jury.

We, the jury, find the defendant not guilty of the trespass and ejectment complained of and charged against him by the plaintiff.

ALFRED BAYSE, *Foreman*.

To all of which rulings and decisions of said court plaintiff excepts, and asks the court to sign and seal this his bill of exceptions, which is done accordingly.

R. W. WELLS. [SEAL.]

DISTRICT OF MISSOURI, *sct*.

I, Benjamin F. Hickman, clerk of the United States circuit court for the district of Missouri, certify the foregoing to be a full and complete transcript of the record and proceedings of said court in a certain suit therein determined between Joshua R. Stanford, plaintiff, and Clay Taylor, defendant, as the same remains of record and on file in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this twenty-fourth day of May, eighteen hundred and fifty-five.

[L. S.]

BEN. F. HICKMAN, *Clerk*.

UNITED STATES OF AMERICA.
Missouri district, *sct*.

The President of the United States, to the honorable the judges of the circuit court of the United States for the eighth circuit, district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between Joshua R. Stanford, plaintiff, and Clay Taylor, defendant, a manifest error hath happened to the great damage of the said Joshua R. Stanford, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together

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with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-five. Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for district of Missouri hereto attached, the date last above written.

[L. S.]

BEN. F. HICKMAN, *Clerk*.

Allowed by me.

R. W. WELLS,
Dist. judge U. S. for the dist. of Mo.

In obedience to the within writ of error, I herewith send a transcript of the record and proceedings in the case of Stanford vs. Taylor, therein mentioned.

Given under my hand this twenty-fifth day of May, eighteen hundred and fifty-five.

BEN. F. HICKMAN,
Clerk ct. ct. U. S. Mo. dis.

with this writ, that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right, and according to the laws and custom of the United States, should be done.

[L. S.] Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this twenty fifth day of May, in the year of our Lord one thousand eight hundred and fifty-five. Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for district of Missouri hereto attached, the date last above written.

BEN. F. HICKMAN, *Clerk.*

Allowed by me:

R. W. WELLS,
Dist. Judge U. S. for the dist. of Mo.

In obedience to the within writ of error, I herewith send a transcript of the record and proceedings in the case of Stanford vs. Taylor, therein mentioned.

Given under my hand this twenty fifth day of May, eighteen hundred and fifty five.

BEN. F. HICKMAN,
Clerk of ct. U. S. Mo. dis.

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SUPREME COURT OF THE UNITED STATES.

No. 91.

ADAM OGILVIE ET AL., COMPLAINANTS,

vs.

THE KNOX INSURANCE COMPANY ET AL.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF INDIANA.

Be it remembered, that amongst the records of the United States circuit court for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the first day of June, in the year of our Lord 1855—that being the eleventh day of said term of said court—before the honorable John McLean and the honorable Elisha M. Huntington, judges of said circuit and district, is the following order, to wit:

ADAM OGILVIE et al.
vs.
THE KNOX INSURANCE COMPANY et al. } Chancery.—No. 3.

Now at this time come the parties, and the judges of this court being opposed in opinion on certain questions arising in this cause, they order and direct that the following statement of the matters and questions upon which the opinions of the judges are so opposed, be entered upon the record of this court, and that the same be certified under the seal of this court to the Supreme Court of the United States, to be finally decided.

OGILVIE and others, complainants,
vs.
THE KNOX INSURANCE CO., Cullom and others,
defendants.

The complainants are the several creditors of the Knox Insurance Company, holding judgments and executions returned "no property," &c., against the company. Cullom, and the other defendants, twenty-five in number, are charged as stockholders in default in the payment of their several stock subscriptions.

The bill charges substantially as follows:

1st. That some time before the 12th of February, 1850, the company was duly organized under its charter, and had authority to receive further subscriptions of stock; and that afterwards, at various times, between that time and the first of June, 1850, Cullom and the other defendants, severally, became subscribers for stock, and either paid in cash or secured by note or bill of exchange ten per cent. of the amounts severally subscribed, and for the balance made their notes or bills; and that the bills of exchange made for the ten per cent. *was* renewed by other bills of exchange drawn in September and October, 1850, and the bill sets out all the securities remaining due and unpaid.

2d. That the complainants are creditors of the company by reason of losses on policies issued by the company, at various times, after the subscriptions of the defendants, and the judgments and executions are stated.

3d. That the company is destitute of property subject to execution.

4th. That the company has neglected to enforce collection of the money due from the defendants.

5th. That the defendants refuse to pay, on the pretence that their subscriptions were procured by means of certain false representations concerning the situation, prospects, and actual business of the company.

7th. And that the complainants are advised, that it is not material to them or to others who have dealt with the company, how or why the defendants became stockholders; that by becoming such, the defendants gave credit to the company by means whereof the complainants were induced to deal with it.

8th. That of the defendants, Battorff, Cullom, Hughes, Sparkes, and Savitz, and one Kegwin, a debtor, subscriber not made a party because a citizen of Kentucky, acted as officers of the company throughout the year 1850.

9th. And that the defendants, nor any of them, did not, at any time in any manner, attempt to inform the public of the alleged facts now set up in defence.

The prayer is that the defendants pay, &c., and for general relief. The Knox Insurance Company answered, and admitted generally the facts stated in the bill, &c. Cullom and the other defendants severally answered. The answers admit the execution of the securities by the defendants on account of the stock subscribed by them, and set up as a defence substantially the following: That Robert N. Carnan was an agent of the company to procure subscriptions of stock, and as such, in February, 1850, made to defendants certain false representations, by which they were induced to subscribe for said stock, and give their said notes and bills. Their representations were as to the amount of stock then subscribed and secured at Vincennes, and as to the amount of funds on hand; and that defendants had not at that time any means of knowing the accuracy of these representations.

The depositions of Cullom, Savitz, and Schwartz (three of the defendants) were taken and offered to be read in evidence in behalf of the other defendants, but not in behalf of themselves, to prove the allegations of fraud set out in the answers. The complainants objected to the competency of said witnesses, because they were parties to this action, and the objections by consent of parties were reserved to the hearing.

At the May term, 1854, this cause was submitted to the court on the bill, the answers, and the depositions, including the depositions of the Cullom, Savitz, and Schwartz, which were then read, subject to the objections above mentioned; and after argument, the said cause was continued under advisement to the November term following.

At the November term, 1854, the cause was continued to the May term, 1855, under advisement.

And now, at the May term, 1855, under the pleadings and on the state of facts above set forth, the following questions occurred:

1st. Are the depositions of said Cullom, Savitz, and Schwartz, under the circumstances of this case, and to the effect above stated, competent as evidence for their co-defendants? And, on this question, the opinions of the judges were opposed.